

Smoking and Health Cases Pending Outside  
the United States

ARGENTINA

Fernandez v. Nobleza-Piccardo S.A.I.C.y F.  
This lawsuit was filed on approximately August 7 or August 8 in the National Labor Court (a court much like a workers' compensation court in the United States) in Buenos Aires, Argentina, by Jesus Eduardo Fernandez against Nobleza-Piccardo S.A.I.C.y F., which is BAT's subsidiary in Argentina. Fernandez, 60 years old, is a former employee of Nobleza and worked in Nobleza's factory as a machine operator from 1975 to 1989. Fernandez claims that he is suffering from atherosclerosis or obstruction of some peripheral blood vessels as a result of exposure to environmental tobacco smoke. Fernandez claims damages of 355,686.70 Australs as of December 31, 1988.

Nobleza has offered evidence to the court to refute plaintiff's claims and this prompted plaintiff to submit additional evidence. Nobleza has asked the court to reject plaintiff's additional evidence, a motion which has not yet been ruled upon. Nobleza has also filed a motion that contends the suit is barred by the statute of limitations -- Fernandez' peripheral vascular may disease may have been diagnosed as early as 1984.

Lidia Nanci Chauque and Miriam Lilitana Alarcon v. Juan Manuel Figueroa, Leopoldo Figueroa and Marcela Figueroa de Lee (Chauque, et al., v. Figueroa, et al.). This lawsuit was filed in February of 1989 in the Labor Court in the province of JuJuy in northern Argentina by the widow and daughter of Antenor Alarcon against the heirs of Figueroa Campero. Figueroa Campero was the lessee of the tobacco farm where Mr. Alarcon allegedly worked in all stages of tobacco production from early 1975 until his death on December 29, 1986. Plaintiffs allege that Mr. Alarcon's illness (lung fibrosis, edema and other lung diseases) was caused by his exposure to pesticides, carbon dioxide and

2041140444

2041140444

January 22, 1990  
Page 2

"tar" of tobacco leaves inhaled while working on defendants' property.

Plaintiffs' claim is for damages caused by the death of Mr. Alarcon is estimated at 240,000 Australs for actual damages and 45,000 Australs for "moral damages" as of the date of the complaint.

Plaintiffs have sued under the general tort and contract rules of Argentina. Defendants have filed a Statement of Defense claiming the suit should be dismissed under the statute of limitations and by reason of lack of causation. Evidence has not yet been submitted, but the case is expected to move quickly and judgment could be rendered during 1990.

No change.

#### AUSTRALIA

Australia Federation of Consumer Organizations Inc. (AFCO) v. Tobacco Institute of Australia Ltd. (TIA). In July 1986, TIA ran an ad concerning environmental tobacco smoke entitled "From Those Who Do ... To Those Who Don't." The ad stated in part that "... there is little evidence and nothing which proves scientifically that cigarette smoke causes disease in non-smokers." The ad went on to discuss certain scientific studies, quoting from some. The Australian Trade Practices Commission (TPC) challenged the ad as misleading and deceptive. After discussions with TPC, TIA ran a "follow-up ad" and TPC informed TIA that, as a result, it considered the matter closed. Subsequently, AFCO, a private organization, filed suit seeking an order prohibiting TIA from running the original ad or similar ads in the future.

Trial began on November 20 and adjourned on December 14. The trial will resume on March 5, 1990. Plaintiff has not yet completed presentation

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2041140445

January 22, 1990

Page 3

of its case and is not expected to do so until court resumes next year. Plaintiff is also expected to present rebuttal evidence after TIA submits its case. A decision by the trial court is not expected until the latter half of 1990.

#### CANADA

Imperial Tobacco Ltd. v. Attorney General of Canada and RJR-MacDonald v. Attorney General of Canada. While not technically consolidated, these actions are being tried concurrently in the same court. These cases, challenging the constitutionality of Canada's Tobacco Products Control Act, were filed on August 31, 1988, and September 1, 1988, respectively, in the Superior Court, Province of Quebec, District of Montreal. The companies are arguing that the Act, which prohibits all forms of advertising and promotion of Canadian tobacco products, infringes the right to free speech.

Trial began on September 25, and RJR-MacDonald has completed the presentation of the evidence in its case, while Imperial has only to complete the examination of one witness. The government has begun its portion of the case by presenting the testimony of several medical expert witnesses. The trial will probably continue into April 1990. The Quebec Court of Appeal will hear Imperial's appeal of a certain evidentiary ruling on February 1. The Court of Appeal granted Imperial's motion for leave to appeal on December 11. On December 13, the Quebec Court of Appeal granted the government leave to appeal certain issues but refused the Attorney General's request to stay the trial pending appeal. The appeal will be heard on February 16, 1990. After the holiday recess, which was extended due to the government's retention of new counsel and by the illness of one of RJR-MacDonald's lawyers, trial will resume on Monday, February 19.

2041140446

2041140446

January 22, 1990  
Page 4

Perron v. RJR-MacDonald, Inc. This case was filed in June of 1988 in British Columbia. Perron allegedly suffers from Buerger's Disease, which resulted in the amputation of both of his legs. Perron claims to have smoked RJR-MacDonald's Export cigarettes from 1965 (age 12) until 1983. No dollar amount of damages is specified in the complaint.

Trial has been rescheduled for January 21, 1991, although the Court of Appeal has not issued its ruling on RJR-MacDonald's appeal, which was argued in June. The issue on appeal is whether plaintiff's claim is barred by the statute of limitations.

Rothmans, Benson & Hedges Inc. v. Attorney General of Canada. On July 20, 1988, Rothmans filed this case challenging the constitutionality of Canada's Tobacco Products Control Act. Unlike the RJR-MacDonald and Imperial cases, which are filed in "state" court in Montreal, this case was filed in "federal" court. Like the other two cases, the RSH lawsuit argues that the Act infringes the right to free speech.

No change.

#### FINLAND

Aho v. Suomen Tupakka (BAT subsidiary) and Oy Rettig Ab (RJR licensee). This case was filed in April 1988 and is pending in the City Court of Helsinki. Mr. Aho allegedly developed lung cancer, laryngeal cancer, emphysema and chronic bronchitis as a result of smoking Rettig's Klubi cigarettes from 1941 until 1966 and Suomen's North State brand from 1966 until 1986.

A hearing was held on January 18, 1990. Plaintiff called two witnesses, Dr. Rimpelae and Dr. Korhonen. Dr. Rimpelae testified regarding

2041140447

2041140447

January 22, 1990  
Page 5

defendants' advertising practices and opined that prior to the passage of the Tobacco Law it was illegal to market cigarettes in Finland. Dr. Korhonen testified that there is nothing in Mr. Aho's occupational history to indicate any cause of Mr. Aho's illness other than smoking. After calling these two witnesses, plaintiff rested.

The next hearing is scheduled for May 17. At that time, defendants will begin presenting their case.

#### NETHERLANDS

Stichting Sigaretten Industry (The Cigarette Industry Foundation) v. Stichting Volksgezondheid en Roken ("StiVoRo") (The Public Health and Smoking Foundation). In October 1987, the Public Health and Smoking Foundation (Stichting Volksgezondheid en Roken -- "StiVoRo") published advertisements claiming that environmental tobacco smoke is "unhealthy" for non-smokers. In December 1987, a lawsuit was filed in the District Court of the Hague on behalf of the 14 tobacco companies (including Philip Morris) doing business in the Netherlands, claiming that various aspects of the ads were inaccurate and seeking an order prohibiting StiVoRo from making statements which suggest that environmental tobacco smoke is harmful.

On March 30, 1988, StiVoRo filed its Statement of Defense, generally asserting that the statements in the ads were accurate. Cigarette Industry Foundation replied in September of 1988, and StiVoRo filed a statement of rejoinder on August 1, 1989. A decision by the trial court is not expected before late 1990.

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2041140448

2041140448

January 22, 1990  
Page 6

#### NORTHERN IRELAND

Dean v. Gallaher. This Buerger's Disease case was filed on August 22, 1988. Mr. Dean is 34 and claims to have smoked 20 to 30 cigarettes per day of an unknown Gallaher brand. He allegedly began smoking in 1968 and, in January of 1986, underwent a bypass operation on his femoral artery that extended from his groin to his mid-calf.

On August 7, 1989, plaintiff filed his Statement of Claim, which alleges, among other things, that plaintiff was addicted, and that Gallaher: caused consumers to believe there was no risk in smoking; failed to adequately moderate or reduce promotion campaigns; failed to provide information to the public about dangers associated with smoking; used misleading advertising; failed to warn of the risk to smokers of developing Buerger's Disease; failed to research the effects of smoking, including addiction; minimized the evidence that smoking was dangerous; and failed to provide adequate treatment to those addicted to smoking.

Gallaher plans to file a motion to compel production of plaintiff's medical records. Gallaher may also file a motion to strike portions of plaintiff's Statement of Claim.

#### PHILIPPINES

Jardeleza, et al. v. R.J. Reynolds Tobacco Co., Philip Morris Inc., et al. Plaintiffs seek an injunction barring cigarette advertising and an order requiring the companies to place warnings on cigarette packages. Plaintiffs also ask that the defendants be required to forfeit the amounts of their respective advertising budgets.

No change.

2041140449

2041140449

January 22, 1990  
Page 7

Zamora v. Fortune Tobacco Corp. This Buerger's Disease case was filed November 26, 1988, in the Regional Trial Court of Quezon City. The plaintiff allegedly smoked Champion brand cigarettes from 1965 until 1970 and Hope brand cigarettes from 1970 until 1986. Fortune is an RJR licensee but Champion and Hope are not Reynolds brands.

Fortune's motion to dismiss based on the statute of limitations was granted on June 29.

No change.

#### THREATENED LITIGATION

##### JAPAN

An anti-smoking group, known as the Lawyer's Organization for Nonsmoker's Rights, has been formed in Japan and has announced that a smoking and health product liability case will be filed against JTI in early 1990. The case apparently will be brought on behalf of a smoker who claims to have laryngeal cancer caused by smoking.

##### SWITZERLAND

Eberle v. F.J. Burrus. In December 1988, Walter Eberle, who claims he has lung cancer, submitted a formal demand for payment to Swiss cigarette manufacturer F.J. Burrus. Little information on Mr. Eberle is available, although he has alleged he smoked Parisienne brand cigarettes from 1953 to 1987. He had one year from the date he submitted his demand for payment to file his claim.

On December 7, 1989, Mr. Eberle served a second demand for payment, which tolls for another year the statute of limitations on his claim.

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